

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

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United States District Court		District	Northern District of Illinois	
Name of Movant	TOMMY E. JONES	Prisoner No.	16318-424	Case No.
Place of Confinement	United States Penitentiary Atwater P.O. Box 019001 Atwater, California 95301			
UNITED STATES OF AMERICA	v. <u>TOMMY E. JONES</u> (name under which convicted)			

## MOTION

1. Name and location of court which entered the judgment of conviction under attack

District Court Northern District of Illinois Eastern Div.

2. Date of judgment of conviction January 28, 2005

3. Length of 300 months

4. Nature of offense involved (all counts) Count 1 21:846 Conspiracy to

possess and distribute a controlled substance. Count 2

21:841(a) Distribute a controlled substance. 21:860

Sell, or dispense near a public housing. 18:2 Aid + Abett

**FILED**

5. What was your plea? (Check one)

(a) Not guilty

07cv6379

new

(b) Guilty

JUDGE PALLMEYER

NOV 09 2007

(c) Nolo contendere

MAG. JUDGE KEYS

NOV 09 2007

**MICHAEL W. DOBBINS**  
CLERK, U.S. DISTRICT COURT

Joint or indictment, grand jury

If you entered a guilty plea to one count or indi

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury

(b) Judge only

7. Did you testify at the trial?

Yes  No

8. Did you appeal from the judgment of conviction?

Yes  No

(2)

AO 243 (Rev. 5/85)

9. If you did appeal, answer the following:

(a) Name of court United States Court of Appeal for the Seventh Circuit  
 (b) Result affirmed district courts ruling of 300 months  
 (c) Date of result July 18, 2006 Case No. 05-1489

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes  No 

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court United States Supreme Court(2) Nature of proceeding Petition for Writ of Certiorari  
06-7245 (Denied to be heard 11-27-06)(3) Grounds raised Interstate Agreement on Detainers  
act that was caused to be delivered "defendant's  
speedy trial demand. (2) whether the Seventh circuit  
holding that a sentencing court may choose to sentence  
a defendant under section 841(B)(1)(A) of title 21  
when conviction rest on completely different penalty 841(B)(1)(C).

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes  No 

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court N / A

(2) Name of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(3)

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes  No

## (5) Result

N/A

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc.

Yes  No

(2) Second petition, etc.

Yes  No

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Defendant counsel told him that petition was denied and to file motion for 2255.

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Interstate agreement on Detainers Act

(Speedy trial violation) Marshals Form 17, Dismiss w/ prejudice

Supporting FACTS (state briefly without citing cases or law): Detainer was lodged

against defendant, and defendant demanded trial

while in state custody, government denied ever receiving  
form (Inov. Br. U.S.C.A. Nov. 30, 2005 case No 05-1489)

original Form in three brief, other arguments have been  
docketed. Defendant in fact did contact court (case No. 02cr0885)

B. Ground two: Motion to suppress suggestive out of court

Identification of defendant on May 11, 2000 and only in court  
identification.

Supporting FACTS (state briefly without citing cases or law): The suggestive out of court

identification of defendant was May 02, 2000 by agent

Kenneth Popovits, the photo-line up and identification

was done by agent Lugo who was not present, and defendant  
was described as FNU LNU #17, which the audio does

not match the transcripts of the drug transaction of May 02, 2000

the U.S.C.A for the seventh circuit ruled that 40 days is relatively a short delay

C. Ground three: post-trial Motion. / Motion for acquittal

Supporting FACTS (state briefly without citing cases or law): February 13, 2004 (tria)

agent Popovits testified as defendant's adverse witness

to attendance sheet being found and defendant name didn't

appear on any of them. stipulation to witness's testimony

and statements government made no rebuttal. post-trial

Motion was filed March 12, 2004 and government responded without

filings extension of time September 21, 2004 the day defendant was

scheduled for court, but was not present. 404(b) evidence was not for

identity so officers should not have been allowed to testify. Double  
jeopardy

Due process  
violation.

(In §886) the government said that officer's testimony was not used to identify defendant, so what purpose was there testimony (double jeopardy).

D. Ground four: Sentencing and dismissal of Indictment, of Counts 1 & 2 of superseding indictment.

Supporting FACTS (state briefly without citing cases or law): The government filed a Motion to dismiss count 1 and 2 at the time of sentencing without the defendant's knowledge, and defendant has been in continuous custody now for 60 months, offense ended September 2002. The district court filed an amended judgment February 13, 2006 for correction of sentence and defendant had no knowledge and the correction was done during the time

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: the United States Court of Appeals was making decision, they affirmed 80 month sentence.

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14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes  No  N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At arraignment \_\_\_\_\_

(b) At arraignment and plea Steven Shabot 53. West Jackson Blv.  
Chicago, IL 60604

(c) At trial Some as above.

(d) At sentencing Some as above.

(e) On appeal Some as above(f) In any post-conviction proceeding N/A(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes  No 

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes  No 

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes  No 

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Pro se lit. *Jimmy Jones*  
 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11-05-07  
 Date

*Jimmy Jones*  
 Signature of Petitioner